

KENSINGTON MUNICIPAL ADVISORY COUNCIL MEETING AGENDA

Tuesday, February 28, 2023, 7:00 PM

Remote meeting protocol in effect:

To slow the spread of COVID-19, the Contra Costa County Health Officer's Shelter Order prevents public gatherings. In lieu of a public gathering, the Municipal Advisory Council Meeting will be accessible via ZOOM to all members of the public as permitted by the Governor's Executive Order N-29-20.

How to view the meeting via Zoom:

<https://cccouny-us.zoom.us/j/87157291985?pwd=dldVcXRlQXdtZnNHpqWVZHBis1dz09>

Password: 848049

How to provide public comment:

Persons who wish to address KMAC during Citizens' Comments or with respect to an item on the agenda may join the meeting (use link above) or call in as follows:

Call in: 888-278-0254 (US Toll Free) **Conference code: 445147**

Public comments may be limited to 4 minutes per speaker. Your patience is appreciated. For assistance with remote access contact robert.rogers@bos.cccounty.us

Meeting Agenda:

1. Roll Call
2. Announcements re: Changes to KMAC
3. Citizens' Comments
4. Approval of Meeting Notes from November 29, 2022
5. Presentation of proposed changes to Contra Costa County's Tree Obstruction of Views Ordinance (see attached documents)
6. Adjournment

KMAC will provide reasonable accommodations for persons with disabilities who plan to participating in the meetings by contacting Robert Rogers, 24 hours prior to the scheduled meeting at robert.rogers@bos.cccounty.us . Disclosable public records related to an open session item on a regular meeting agenda and distributed by KMAC to a majority of its members less than 72 hours prior to that meeting are available for public inspection on the MAC's website.

SIGNIFICANT CHANGES TO THE TREE OBSTRUCTION OF VIEWS ORDINANCE

Presentation to Kensington Municipal Advisory Council – 2/28/23

- New Arbitration Procedure. The draft Tree Obstruction of Views Ordinance establishes a new arbitration procedure to resolve disputes over views that are obstructed by trees.

- o The draft ordinance encourages property owners to resolve disputes over views informally or by voluntary mediation, but if a dispute cannot be resolved informally or by mediation, a property owner who believes that a tree on another property is obstructing his or her view may submit a “view claim” to the County.

- o A view claim must describe the view that is obstructed, describe which trees are obstructing the view, and explain what steps have been taken to resolve the dispute.

- o A person who files a view claim has no right to a view that is greater than the view that existed when the person purchased the property.

- o A view claim is heard by a tree arbitration board, which is a board established by the Board of Supervisors. A municipal advisory council (like the Kensington Municipal Advisory Council) could serve as a tree arbitration board.

- o A property owner whose view is obstructed and a tree owner may present evidence to the tree arbitration board.

- o The evidence may include an arborist’s report, which is a report that evaluates the feasibility and impact of actions that may be taken to reduce a view obstruction. Examples of these actions include tree trimming and tree thinning.

- o After hearing evidence, the tree arbitration board will issue a written decision. The decision will include the board’s findings as to whether a view is obstructed. If a view is obstructed, the decision will describe the actions that must be taken to restore a view and will allocate the costs associated with restoring the view.

- o The decision of the tree arbitration board is binding on both parties only if they agreed before the hearing to be bound by the board’s decision. The parties must comply with the decision within 30 days unless a longer period is specified.

- o The new arbitration procedure is in sections 816-2.602 through 816-2.606 of the draft ordinance.

- New Procedure for Advisory Decisions. The draft ordinance also establishes a new procedure for fact-finding and advisory decisions by a tree arbitration board.

- o If the parties do not agree to binding arbitration, a property owner or a tree owner may request that the tree arbitration board issue a non-binding advisory decision.

- o Under this procedure, the tree arbitration board receives evidence and issues a written decision.

- o The decision will include the board’s findings as to whether a view is obstructed. If a view is obstructed, the decision will describe the actions that must be taken to restore a

view and will allocate the costs associated with restoring the view.

- o The written decision is not binding on the parties, but if one of the parties goes to court to enforce the decision, there is a “rebuttable presumption” in favor of the tree arbitration board’s decision – that is, the board’s decision is presumed to be correct.

- o The new advisory decision procedure is in section 816-2.608 of the draft ordinance.

- Other Changes to the Tree Obstruction of Views Ordinance:

- o Additional Purpose. A new purpose of the ordinance is to discourage the planting and maintenance of trees that may result in excessive shade and unduly diminish desirable views. (Section 816-2.206(d).)

- o New Definitions. The draft ordinance adds new or revised definitions for “arborist,” “arborist’s report,” “tree,” and “view.” (Section 816-2.208.) The revised definition of “view” is similar, but not identical, to the definition of “view” in the Kensington overlay ordinance (planning ordinance). A “view” is a “range of sight including pleasing vistas or scenes from the primary living areas of a residence.” Note: an item that is open for discussion during the public review process is whether the term “view” should also include a range of sight from a deck connected to a residence.

- o New Factors. Several factors are considered when a view obstruction is evaluated by a tree arbitration board. The draft ordinance adds tree flammability and tree health as additional factors to be considered. (Section 816-2.410.)

- o Other County Tree Ordinance. The draft ordinance clarifies (Section 816-2.416(a)) that if a tree is trimmed, thinned, removed, or another action is taken to restore a view, a tree permit may be required under the County’s Tree Protection and Preservation Ordinance, which is Chapter 816-6 of the ordinance code.

- o Solar Shade Control Act. The Solar Shade Control Act (Public Resources Code sections 25980 through 25986) is a state law that authorizes a private nuisance cause of action against a property owner if the owner’s tree blocks someone else’s solar panels. The draft ordinance does not preclude anyone from separately enforcing the Solar Shade Control Act. (Section 816-2.806(b).)

Ordinance 2023-XX
Draft REDLINE

Chapter 816-2 —~~TOV~~ TREE OBSTRUCTION OF VIEWS ~~(-TOV)~~ COMBINING DISTRICT

Article 816-2.2. General

816-2.202 Tree obstruction of views (-TOV) combining district.

All land within a land use district combined with a ~~—TOV~~ tree obstruction of views ~~(-TOV)~~ combining district ~~is~~shall be subject to the provisions in this chapter.

(Ord. ~~2023-XX § 2,~~ 84-3).

816-2.204 Purpose and intent.

The purpose of this chapter is to provide a method for private property owners to gain restoration of views and sunlight lost due to tree growth by another private property owner ~~as defined in Article 816-2.4.~~ It is not intended by this chapter to create any greater right to a view or access to sunlight than existed at the time any claimant purchased ~~their~~his property.

(Ord. ~~2023-XX § 2,~~ 84-3).

816-2.206 Objectives.

The objectives of, and the justification for, this chapter are to:

- (a) Preserve and promote the aesthetic benefits provided by trees, views of surrounding locale, and access to light~~;~~
- (b) Preserve and promote the beneficial use and enjoyment of privately owned land within the county~~;~~
- (c) Preserve, maintain, and enhance property values within the county~~;~~
- (d) Discourage the planting of tree species and maintenance of trees in a manner that may provide excessive shade and unduly diminish desirable views.

(Ord. ~~2023-XX § 2,~~ 84-3).

~~Article 816-2.4. Definitions~~

816-2.~~208402~~ DefinitionsGeneral.

~~For purposes of this chapter Unless otherwise specifically provided, or required by the context,~~
the following terms have the following meanings:~~these meanings for the purposes of this chapter.~~

~~(Ord. 84-3).~~

(a) "Arborist" means:

(1) A certified arborist who is certified by the International Society of Arboriculture;
or

(2) A consulting arborist who is listed as a member of the American Society of Consulting Arborists.

(b) "Arborist's report" means a written report prepared by an arborist that evaluates the feasibility and impact of a proposed restorative action or actions.

~~816-2.404 Claimant.~~

(c) "Claimant" means any owner of real property who believes in good faith that the growth, maintenance, or location of **one or more** trees situated on the property of another diminishes the beneficial use, economic value, ~~or-and~~ enjoyment of the claimant's this property, and who files a view claim under this chapter ~~Section 816-2.424~~.

~~(Ord. 84-3).~~

~~816-2.406 Obstruction.~~

(d) "Obstruction" means any blocking or diminishing of a view or sunlight by tree growth, maintenance, or location.

~~(Ord. 84-3).~~

~~816-2.408 Thinning.~~

(e) "Thinning" means the selective removal of entire branches from a tree so as to improve visibility through the tree or improve the tree's structural condition.

~~(Ord. 84-3).~~

~~816-2.410 Topping.~~

(f) "Topping" means the removal of the upper portion of a tree's trunk or primary leader.

(g) "Tree" means a live woody plant with a single perennial stem or multiple perennial stems.

(h) "Tree owner" means the owner of real property where one or more trees that form the basis for a view claim filed under this chapter are situated.

(i) "Tree removal" means the destruction and removal of any tree by cutting. Tree removal need not include removal of the tree stump or roots, but any remaining portion of the tree may not exceed three feet above grade.

~~(Ord. 84-3).~~

816-2.412 Trimming.

- (i) "Trimming" means the selective removal of portions of branches from a tree ~~so as~~ to modify the tree's form, shape, or profile, ~~and/or~~ improve the tree's appearance.

~~(Ord. 84-3).~~

816-2.414 Tree.

~~"Tree" means any woody perennial plant, usually with one main trunk, attaining a height of at least eight feet at maturity.~~

~~(Ord. 84-3).~~

816-2.416 Tree owner.

~~"Tree owner" means the owner of real property on which are situated tree(s) whose growth, maintenance or location allegedly diminishes the beneficial use, economic value and enjoyment of the property of another.~~

~~(Ord. 84-3).~~

816-2.418 Tree removal.

~~"Tree removal" means the destruction of any tree by cutting, girdling, interfering with the water supply, applying chemicals, or regrading around the base of the trunk.~~

~~(Ord. 84-3).~~

816-2.420 View.

- (k) "View" means a range of sight including pleasing vistas ~~or prospects or scenes~~ from the primary living areas of a residence. The term "view" includes both up-slope and down-slope vistas or scenes, but is distant or panoramic range in nature, as opposed to short range. Views include, but are not limited to, vistas or scenes of skylines, bridges, distant cities, distinctive geologic features, hillside terrain, wooded canyons, ridges, and bodies of water ~~the sight of geologic features, bays, oceans, sky lines, bridges and distant cities.~~

~~(Ord. 84-3).~~

816-2.422 View arbitrator.

~~"View arbitrator" means any person mutually agreed to by the claimant and tree owner, a landscape architect registered and licensed by the state of California or other selected in accordance with applicable Arbitration Rules of the American Arbitration Association.~~

~~(Ord. 84-3).~~

816-2.424 View claim.

(l) "View claim" means atthe claimant's verified written basis for arbitration or court action under this chapter, ~~which clearly establishes all of the following:~~

- ~~(1) The precise nature and extent of the alleged view obstruction and particulars of the manner in which it diminishes the beneficial use, economic value and enjoyment of the claimant's property, including all pertinent corroborating physical evidence available;~~
- ~~(2) The exact location of all trees alleged to cause a view obstruction, the address of the property upon which the trees are located, and the present tree owner's name and address. This requirement may be satisfied by the inclusion of tree location, property address and tree owner information on a valid property survey or plot plan submitted with the view claim;~~
- ~~(3) Any mitigating actions proposed by the parties involved to resolve the alleged view claim;~~
- ~~(4) The failure of personal communication between the claimant and the tree owner to resolve the alleged view obstruction as set forth in this chapter. The claimant must provide physical evidence that written attempts at conciliation have been made and filed. Such evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.~~

(Ord. 84-3).

816-2.426 Windowing.

(m) "Windowing" means the creation of a limited horizontal viewing plane en through the head of a tree or trees.

(Ord.s. 2023-XX § 2, 84-3).

Article 816-2.46. Standards

816-2.402602 General.

This article establishes standards for resolving ~~Unless otherwise specifically provided, the provisions of this article are to be utilized to resolve~~ view claim disputes.

(Ord.s. 2023-XX § 2, 84-3).

816-2.404604 Rights.

A claimant has no right greater than that which existed ~~when at the time of~~ the claimant's acquisition of the property involved in the view claim. ~~The claimant, and~~ shall provide evidence to prove the extent of that original view and right.

(Ord.s. 2023-XX § 2, 84-3).

816-2.~~406606~~ View character.

The character of a view ~~is shall be~~ determined by evaluating ~~the following~~:

- (a) The vantage point(s) from which the view is obtained_;
- (b) The existence of landmarks or other unique features in the view_;~~and~~
- (c) The extent to which the view is diminished by factors other than the tree(s) involved in the claim.

(Ord~~s~~. 2023-XX § 2, 84-3).

816-2.~~408608~~ Obstruction character.

The character of the view obstruction ~~is shall be~~ determined by evaluating ~~the following~~:

- (a) The extent of the alleged view obstruction_; expressed as a percentage of the total view, ~~as and~~ calculated by means of a surveyor's transit or ~~by~~ photography or both_;~~and~~
- (b) The extent to which landmarks or other unique features in the view are obstructed.

(Ord~~s~~. 2023-XX § 2, 84-3).

816-2.~~410610~~ Benefits and burdens.

The extent of benefits and~~/or~~ burdens derived from the alleged view obstruction ~~is tree(s) shall be~~ determined ~~by considering the with consideration given to the tree(s)' contribution of the tree(s)~~ to the following factors:

- (a) Visual screening_;
- (b) Wildlife habitat_;
- (c) Soil stability, as measured by soil structure, degree of slope_; and ~~the~~ extent of ~~the~~ tree(s) root system_;
- ~~(d)~~ Energy conservation and~~/or~~ climate control_;~~and/or~~
- ~~(d)(e)~~ Interference in efficient operations of ~~a~~ claimant's solar energy systems_;
- ~~(e)(f)~~ Effects on neighboring vegetation_;
- ~~(f)(g)~~ Visual quality of the tree(s), including_; but not limited to_; species characteristics, size, form, texture, color, vigor_; and location_;
- ~~(g)(h)~~ The economic value of the tree(s), as measured by the criteria developed by the American Society of Landscape Architects_;~~and~~
- ~~(h)(i)~~ Other tree-related factors, including_; but not limited to_; indigenous tree species, specimen tree quality, rare tree species, tree flammability, tree health, and historical value.

(Ord~~s~~. 2023-XX § 2, 84-3).

816-2.412612 Evaluation of restorative actions~~Restoration evaluation.~~

Any restorative action ~~is~~shall be evaluated based on the standards of this article and by consideration~~ingation of~~ the following:

- (a) The effectiveness of the restorative action in reducing the view obstruction.;
- (b) Any adverse impact of the restorative action on the benefits derived from the tree(s) in question.;
- (c) The structural and biological effects of the restorative action on the tree(s) in question.;
~~and~~
- (d) The cost of the restorative action, as determined by consultation with licensed landscape architects.

(Ord.s. 2023-XX § 2, 84-3).

816-2.414614 Limits on restorative actions~~Restoration limits.~~

Restorative actions ~~are~~shall be limited to the following:

- (a) Trimming.;
- (b) Thinning.;
- (c) Windowing.;
- (d) Topping.;
- (e) Tree removal with necessary replacement planting.;~~and/or~~
- (f) No action.

(Ord.s. 2023-XX § 2, 84-3).

816-2.416616 Implementation of restorative actions~~Restoration implementation.~~

All restorative actions ~~must~~shall be undertaken subject to all of the following:

- (a) Restorative actions must be consistent with all applicable statutes, ordinances, and regulations. A restorative action involving a protected tree must comply with Chapter 816-6, the County Tree Protection and Preservation Ordinance.
- (b) Where possible, restorative actions ~~are~~shall be limited to the trimming ~~and/or~~ thinning of branches.; but, when trimming or thinning is not a feasible solution, windowing is the preferable solution.
- (c) Topping may be considered only if~~When thinning, trimming, or and~~ windowing of branches is not a feasible solution, topping shall be considered.
- (d) Tree removal ~~may~~shall only be considered when all other restorative actions are judged to be ineffective. Tree removal must and shall be accompanied by replacement plantings

of appropriate plant material necessary to restore the maximum level of benefits lost due to tree removal. Replacement plantings can be required on the tree owner's or the claimant's property. If tree removal will eliminate or significantly reduce the tree owner's benefits of shading, visual screening, or privacy, replacement screen plantings shall, at the tree owner's option, be established before tree removal occurs.

- (e) A In those cases where tree removal eliminates or significantly reduces the tree owner's benefits of shading, visual screening, or privacy, replacement screen plantings shall, at the tree owner's option, be established prior to tree removal; notwithstanding the provisions of subsection (4) of this section, the tree owner may choose tree removal with replacement plantings as an alternative to trimming, thinning, windowing, or topping.
- (f) All trimming, thinning, windowing, topping, or removal required under this chapter must be performed by a qualified tree trimmer or as approved by the tree arbitration board ~~view~~ arbitrator.

(Ord.s. 2023-XX § 2, 84-3).

Article 816-2. 68. Procedures

816-2. 602802 Initial reconciliation.

If aA claimant-who believes in good faith that the growth, maintenance, or location of one or more trees situated on the property of another diminishes the beneficial use or, economic value of, or sunlight or enjoyment of views naturally accruing to, the claimant's property, the claimant shall notify the tree owner in writing of thosesuch concerns. When a claimant notifies a tree owner of those concerns, the claimant should also attempt to discuss those concerns in person with the tree owner The submission of said notification to the tree owner should be accompanied by personal discussions, if possible, to enable the claimant and the tree owner to attempt to reach a mutually agreeable solution to the alleged view obstruction in accordance with the provisions of this chapter.

(Ord.s. 2023-XX § 2, 84-3).

816-2. 604 Voluntary mediation.

- (a) If the initial reconciliation attempt is unsuccessful, the claimant may propose mediation by serving on the tree owner a written request for mediation. Acceptance of mediation is voluntary, but the tree owner has no more than 30 days after being served with a written request for mediation to accept or reject the offer of mediation, unless otherwise extended by the claimant. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days after mediation is accepted.
- (b) It is recommended that the services of a professionally trained mediator or mediation service be employed. The Department of Conservation and Development will provide, upon request, a list of mediators and mediation services, accompanied by their

qualifications, that the parties may review and consider for selection. The fee for mediation services will be determined by the mediator and the parties. The mediator will not have the power to issue binding orders for restorative action but must strive to enable the parties to resolve their dispute at this stage to eliminate the need for binding arbitration, a fact-finding and advisory decision, or litigation.

(Ords. 2023-XX § 2, 84-3).

816-2.606804 Arbitration before a tree arbitration board.

- (a) The Board of Supervisors may establish or designate one or more tree arbitration boards.
- (b) If the parties are unable to reach agreement through the initial reconciliation process or with the assistance of a mediator, either the claimant or the tree owner may offer in writing to the other party to submit the dispute to binding arbitration before a tree arbitration board. The initiating party shall serve on the other party by personal service or certified mail, return receipt requested, an agreement executed by the initiating party to submit the dispute to binding arbitration. If the non-initiating party concurs, the non-initiating party shall execute the agreement within 30 days after service. Failure to execute the agreement within 30 days after service is a rejection of binding arbitration.
- (c) If the agreement is accepted, the initiating party shall submit a view claim to the Department of Conservation and Development. The filing fee for a view claim will be established by the Board of Supervisors. An arborist's report must be submitted with the view claim.
- (d) A view claim must clearly establish all of the following:
 - (1) The precise nature and extent of the alleged view obstruction and the manner in which it diminishes the beneficial use, economic value, or enjoyment of the claimant's property, including all pertinent corroborating evidence available.
 - (2) The exact location of all trees alleged to cause a view obstruction, the address of the property upon which the trees are located, and the present tree owner's name and address. This requirement may be satisfied by including the tree location, property address, and tree owner information on a valid property survey or plot plan submitted with the view claim.
 - (3) Any mitigating actions proposed by the parties involved to resolve the alleged view claim.
 - (4) A showing that personal communication between the claimant and the tree owner to resolve the alleged view obstruction as set forth in this chapter failed. The claimant must provide physical evidence that written attempts at reconciliation were made. This evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence to the tree owner.
- (e) The tree arbitration board will review the view claim at a noticed public meeting. At least 10 days before the arbitration meeting, notice will be mailed to the affected parties and to

the owners of any property within a radius of 300 feet of the boundaries of the property where the trees are located.

- (f) The arbitration proceeding will be based on available evidence and testimony. Either party to the action may be represented by an arborist or present an arborist's report to the tree arbitration board. The tree arbitration board may recommend the services of other experts to the parties. Each party may present witnesses and question witnesses presented by the other party.
 - (g) The tree arbitration board will issue a written decision to the parties. The decision will include the tree arbitration board's findings with respect to the standards listed in Article 816-2.4, required restorative actions, and an allocation of all costs. All mandated restorative actions must be initiated within 30 days after the arbitration decision is issued, unless otherwise specified in the decision.
 - (h) The decision of the tree arbitration board is final and binding and enforceable under Code of Civil Procedure Section 1280 et seq. The Department of Conservation and Development will record in the County Recorder's office any final decision of the tree arbitration board that provides for limitations on the property of a tree owner. Where the initial reconciliation process fails, the claimant and the tree owner may elect binding arbitration pursuant to this chapter to resolve the alleged view obstruction. The view arbitrator shall be fully qualified under this chapter and shall be agreed to by both the claimant and the tree owner, who shall indicate such agreement in writing and with the arbitrator's consent. The arbitration agreement may provide for employment of experts representing the parties or may be limited to an investigation of the view claim conducted by the view arbitrator. The view arbitrator shall follow the terms and conditions of this chapter to reach a fair resolution of the view claim, and shall submit a complete written report to the claimant and the tree owner. The report shall include the view arbitrator's findings with respect to all standards listed in Article 816-2.6 and a complete listing of all mandated restorative actions. All mandated restorative actions shall be implemented within thirty days of the delivery of the arbitration report to the claimant and the tree owner, or within such other period recommended by expert advice to be required by seasons of the year, type of tree, etc. The findings of the view arbitrator shall be final.
- (Ords. 2023-XX § 2, 84-3).

816-2.608 Fact-finding and advisory decision by a tree arbitration board.

- (a) If the parties are unable to reach agreement through the initial reconciliation process or with the assistance of a mediator, or do not agree to binding arbitration, the claimant or the tree owner may elect fact-finding and an advisory decision of the tree arbitration board.
- (b) To begin the fact-finding and advisory decision process, the initiating party must submit a view claim to the Department of Conservation and Development. The view claim must

establish all of the items specified in section 816-2.606(d). An arborist's report must be submitted with the view claim.

- (c) The tree arbitration board is the fact-finding board and will render an advisory decision to the parties. The tree arbitration board will review the view claim at a noticed public meeting. At least 10 days before the meeting, notice will be mailed to the affected parties and to the owners of any property within a radius of 300 feet of the boundaries of the property where the trees are located.
- (d) The proceeding will be based on available evidence and testimony. Either party to the action may be represented by an arborist or present an arborist's written report to the tree arbitration board. The tree arbitration board may recommend the services of other experts to the parties. Each party may present witnesses and question witnesses presented by the other party.
- (e) The proceeding need not be postponed if any party refuses permission to inspect the premises, refuses to participate in the proceeding, or fails to produce evidence.
- (f) The tree arbitration board will issue a written advisory decision to the parties. The decision will include the tree arbitration board's factual findings with respect to the standards listed in Article 816-2.4, recommended restorative actions, and a recommended allocation of all costs.
- (g) If litigation is required to enforce the decision of the tree arbitration board, there is a rebuttable presumption in favor of the tree arbitration board's decision. The party bringing any private civil action under this chapter must promptly notify the Department of Conservation and Development in writing of the action.

(Ords. 2023-XX § 2, 84-3).

816-2.806 Costs.

~~The costs of arbitration and all mandated restorative actions and/or replacement plantings shall be apportioned between the claimant and the tree owner as mutually agreed to, or in the absence of agreement as follows:~~

- ~~(1) The claimant and tree owner shall each pay fifty percent of such costs in those cases involving any tree planted by the tree owner subsequent to March 1, 1984.~~
- ~~(2) In all other cases, the claimant shall pay one hundred percent of such costs.~~

~~(Ord. 84-3).~~

816-2.610808 Litigation.

~~If in these cases where~~ the initial reconciliation process or mediation fails to resolve the view claim, ~~and if the parties do not choose~~ binding arbitration ~~is not chosen by the parties,~~ the claimant may pursue civil legal action ~~may be pursued by the claimant.~~

(Ords. 2023-XX § 2, 84-3).

Article 816-2.810. Liabilityies, Costs and Enforcement

816-2.8021002 Liabilityies.

The issuance of a decision by the tree arbitration board ~~an arbitration report pursuant to this chapter~~ does not establish any public use or access not already in existence with regard to the property for which the ~~arbitration report and~~ decision ~~is~~are issued, and does not create any liability for the county, or any other public agency or entity, ~~or the arbitrator~~ with regard to any restorative actions or replacement plantings to be performed.

(Ords. 2023-XX § 2, 84-3).

816-2.804 Costs.

The costs of arbitration and all mandated restorative actions and replacement plantings shall be apportioned between the claimant and the tree owner as mutually agreed to, or in the absence of an agreement, as follows:

- (a) The claimant and tree owner shall each pay 50 percent of all costs in those cases involving any tree planted by the tree owner after March 1, 1984.
- (b) In all other cases, the claimant shall pay 100 percent of all costs.

(Ords. 2023-XX § 2, 84-3).

816-2.8061004 Enforcement.

- (a) Violations of this chapter are not misdemeanors or infractions. Enforcement of this chapter ~~is shall be~~ by the involved private parties. Any claimant may seek to enforce any restorative action mandated pursuant to this chapter through ordinary legal proceedings.
- (b) This chapter does not preclude any person from separately enforcing, if applicable, the provisions of the Solar Shade Control Act, Public Resources Code sections 25980 through 25986.

(Ords. 2023-XX § 2, 84-3).